



New Hampshire

# Department of Education Technical Advisory

Serving New Hampshire's Education Community

## Reporting Requirements of Instances of Child Restraint and Seclusion

RSA 126-U

*This Technical Advisory continues the New Hampshire Department of Education's statutory responsibility to notify schools of their responsibilities pursuant to RSA 126-U, regarding the reporting requirements of instances of child restraint and seclusion.*

In 2014, the legislature passed RSA 126-U, governing child restraint and seclusion practices. Subsequently, the Board of Education passed rules, specifically Ed 1200, which further defines child restraint and seclusion practices and the reporting obligations of schools.<sup>1</sup> It is important to note that the provisions of RSA 126-U and Ed 1200 apply to public schools, charter public schools, public academies, as well as **approved nonpublic schools**.<sup>2</sup> This is discussed in further detail below. This technical advisory is specifically issued pursuant to the Department of Education's annual obligation to notify schools of their reporting responsibilities and to provide appropriate contact information for those agencies.<sup>3</sup>

By way of relevant background, RSA 126-U:1, IV provides that the term "restraint" means:

[the] bodily physical restriction, mechanical devices, or any device that immobilizes a person or restricts the freedom of movement of the torso, head, arms, or legs. It includes mechanical restraint, physical restraint, and medication restraint used to control behavior in an emergency or any involuntary medication. It is limited to actions taken by persons who are school or facility staff members, contractors, or otherwise under the control or direction of a school or facility.<sup>4</sup>

Specifically, "mechanical restraint" occurs when a physical device or devices are used to restrict the movement of a child or the movement or normal function of a portion of his or her body.<sup>5</sup> "Physical restraint" occurs when a manual method is used to restrict a child's freedom of movement or normal access to his or her body.<sup>6</sup> Finally, "medication restraint" is defined as when a child is given medication involuntarily for the purpose of immediate control of the child's behavior.<sup>7</sup>

Importantly, the statute provides that the term "restraint" does not include the following actions:

<sup>1</sup> The rules, Ed 1200, regarding child restraint and seclusion practices and reporting requirements can be found in their entirety on the Department of Education's website.

<sup>2</sup> RSA 126-U:1, V.

<sup>3</sup> RSA 126-U:10, II.

<sup>4</sup> RSA 126-U:1, IV.

<sup>5</sup> RSA 126-U:1, IV(b).

<sup>6</sup> RSA 126-U:1, IV(c).

<sup>7</sup> RSA 126-U:1, IV (a).

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- (1) Brief touching or holding to calm, comfort, encourage, or guide a child, so long as limitation of freedom of movement of the child does not occur.
- (2) The temporary holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a child to stand, if necessary, and then walk to a safe location, so long as the child is in an upright position and moving toward a safe location.
- (3) Physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, and supportive body bands, or other physical holdings when necessary for routine physical examinations and tests or for orthopedic, surgical, and other similar medical treatment purposes, or when used to provide support for the achievement of functional body position or proper balance or to protect a person from falling out of bed, or to permit a child to participate in activities without the risk of physical harm.
- (4) The use of seat belts, safety belts, or similar passenger restraints during the transportation of a child in a motor vehicle.
- (5) The use of force by a person to defend himself or herself or a third person from what the actor reasonably believes to be the imminent use of unlawful force by a child, when the actor uses a degree of such force which he or she reasonably believes to be necessary for such purpose and the actor does not immobilize a child or restrict the freedom of movement of the torso, head, arms, or legs of any child.<sup>8</sup>

The statute defines “seclusion” as the involuntary placement of a child alone in a place where no other person is present and from which the particular child is unable to exit, either due to physical manipulation by a person, a lock, or other mechanical device or barrier.<sup>9</sup> The term “seclusion” does not include the voluntary separation of a child from a stressful environment for the purpose of allowing the child to regain self-control, when such separation is to an area which a child is able to leave.<sup>10</sup> “Seclusion” also does not include circumstances in which there is no physical barrier between the child and any other person or the child is physically able to leave the place.<sup>11</sup> It is important to note that a circumstance or situation may be considered seclusion even if a window or other device for visual observation is present, if the other elements of the statutory definition for seclusion are satisfied.<sup>12</sup>

<sup>8</sup> RSA 126-U:1, IV(d)(1)-(5).

<sup>9</sup> RSA 126-U:1, V-a.

<sup>10</sup> RSA 126-U:1, V-a.

<sup>11</sup> RSA 126-U:1, V-a.

<sup>12</sup> RSA 126-U:1, V-a.

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As briefly mentioned above, the statutory definition of “school” encompasses a school that is operated by a school district, a chartered public school, a public academy, **an approved nonpublic school**, and a private or public provider of any component of a child’s individualized education program.<sup>13</sup> Therefore, the provisions of Chapter 126-U are equally applicable to public and **private schools**. As such, each school, public **and private**, is required to have written policies for managing the behavior of children.<sup>14</sup> Such policy shall describe how and under what circumstances seclusion or restraint are to be used and shall be provided annually to the parent, guardian, or legal representative of each child that is enrolled at the school.<sup>15</sup> The written policies must also include a provision that a school employee has a duty to report a violation of RSA 126-U when that person has reason to believe that the action of another constituted a violation of the statute.<sup>16</sup> If the suspected misconduct involves a credentialed teacher then there are additional reporting requirements pursuant to Ed 510.<sup>17</sup>

If seclusion or restraint is used on a child, the school employee who used seclusion or restraint must submit a written report within 5 business days to the school principal with the following information:

- (1) The date, time, and duration of the use of seclusion or restraint;
- (2) A description of the actions of the child before, during, and after the occurrence;
- (3) A description of any other relevant events preceding the use of seclusion or restraint, including the justification for initiating the use of restraint;
- (4) The names of the persons involved in the occurrence;
- (5) A description of the actions of the facility or school employees involved before, during, and after the occurrence;
- (6) A description of any interventions used prior to the use of the seclusion or restraint;
- (7) A description of the seclusion or restraint used, including any hold used and the reason the hold was necessary;
- (8) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the use of seclusion or restraint;
- (9) A description of any property damage associated with the occurrence;

<sup>13</sup> RSA 126-U:1, V(a)-(e) (emphasis added).

<sup>14</sup> RSA 126-U:2; Ed 1202.01(a)-(c).

<sup>15</sup> RSA 126-U:2; Ed 1202.01(f).

<sup>16</sup> Ed 1202.01(e).

<sup>17</sup> Ed 1202.01(e).

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- (10) A description of actions taken to address the emotional needs of the child during and following the incident;
- (11) A description of future actions to be taken to control the child's problem behaviors;
- (12) The name and position of the employee completing the notification; and
- (13) The anticipated date of the final report.<sup>18</sup>

Each notification that is prepared pursuant to this section shall be retained by the school for review by the State Board of Education and the Department of Health and Human Services.<sup>19</sup> Additionally, within 2 business days of receiving the notification, the school principal shall send via first class mail or by electronic transmission, the information contained within the notification to the child's parent or guardian or guardian ad litem.<sup>20</sup>

Whenever seclusion or restraint has been used on a child, the facility or school shall "make reasonable efforts to verbally notify the child's parent or guardian ad litem...."<sup>21</sup> "Such notification shall be made as soon as practicable and in no event later than the time of the return of the child to the parent or guardian or the end of the business day, whichever is earlier."<sup>22</sup> The "[n]otification shall be made in a manner calculated to give the parent or guardian actual notice of the incident at the earliest practicable time."<sup>23</sup>

If a school employee has intentional physical contact with a child which is in response to a child's aggression, misconduct, or disruptive behavior, a representative of the school must make reasonable efforts to promptly notify the child's parent or guardian.<sup>24</sup> The notification must be made in a manner which is calculated to give the parent or guardian actual notice of the incident at the earliest practicable time.<sup>25</sup> In any event, the notification must be made no later than the time of the return of the child to the parent or guardian or the end of the business day, whichever is earlier.<sup>26</sup> Additionally, within 5 business days, the school must prepare a written

<sup>18</sup> RSA 126-U:7, II (a)-(m); Ed 1202.02(b) (1)-(13).

<sup>19</sup> RSA 126-U:7, III.

<sup>20</sup> RSA 126-U:7, III.

<sup>21</sup> RSA 126-U:7, I; *see also* Ed. 1202.02(a).

<sup>22</sup> RSA 126-U:7, I; *see also* Ed 1202.02(a).

<sup>23</sup> RSA 126-U:7, I; *see also* Ed 1202.02(a).

<sup>24</sup> RSA 126-U:7, IV.

<sup>25</sup> RSA 126-U:7, IV.

<sup>26</sup> RSA 126-U:7, IV.

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report which documents the incident.<sup>27</sup> Such report must contain, at a minimum, the following information:

- (a) The date and time of the incident.
- (b) A brief description of the actions of the child before, during, and after the occurrence.
- (c) The names of the persons involved in the occurrence.
- (d) A brief description of the actions of the facility or school employees involved before, during, and after the occurrence.
- (e) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the incident.<sup>28</sup>

The notification and reporting requirements described above are not required in the following circumstances:

- (a) When a child is escorted from an area by way of holding of the hand, wrist, arm shoulder, or back to induce the child to walk to a safe location. If, however, the child is actively combative, assaultive, or causes self-injury while being escorted, than the notification requirements described above are applicable.
- (b) When actions are taken such as separating children from each other, inducing a child to stand, or otherwise physically preparing a child to be escorted.
- (c) When the contact with the child is incidental or minor, such as for the purpose of gaining a misbehaving child's attention. However, blocking of a blow, forcible release from a grasp, or other significant and intentional physical contact with a disruptive or assaultive child shall be subject to the notification and reporting requirements described above.<sup>29</sup>

Although the incidents described above are not subject to the notification and reporting requirements, schools are required to document complaints that they determine do not meet the criteria for a violation of RSA 126-U.<sup>30</sup> The documentation must include the evidence relied upon in reaching said determination and shall be maintained and provided to the Department of Education when it does its mandatory review pursuant to RSA 126-U:8, which is discussed below.<sup>31</sup>

<sup>27</sup> RSA 126-U:7, V.

<sup>28</sup> RSA 126-U:7, V (a)-(e).

<sup>29</sup> RSA 126-U:7, VI (a)-(c).

<sup>30</sup> Ed 1202.02(e).

<sup>31</sup> Ed 1202.02(e).

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The Department of Education shall review the school's seclusion and restraint records no less than once every three years.<sup>32</sup> When the Commissioner of the Department of Education decides that a complaint is founded or the Commissioner decides that the complaint is unfounded, but there are three or more previous unfounded complaints, the Department of Education shall review the records of that school upon the completion of the investigation and annually for a period of two years following the most recent complaint.<sup>33</sup>

Finally, in cases involving serious injury<sup>34</sup> or death to a child who has been subjected to restraint or seclusion in a school, in addition to the notification and reporting requirements of RSA 126-U:7, the school shall notify the Commissioner of the Department of Education, the Attorney General, and the state's federally-designated protection and advocacy agency for individuals with disabilities.<sup>35</sup> The contact information for those respective agencies is as follows:

<b>Commissioner of Education</b> Virginia M. Barry, Ph.D. 101 Pleasant Street Concord, NH 03301 603-271-3144	<b>Attorney General</b> NH Department of Justice Attn: Attorney Megan Yapple 33 Capitol Street Concord, NH 03301 603-271-3650	<b>Disabilities Rights Center</b> Legal Division 64 North Main Street Suite 2, 3 <sup>rd</sup> Floor Concord, NH 03301 603-228-0432
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### Contacts for Questions:

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<sup>32</sup> Ed 1202.03(a); *see also* RSA 126-U:8.

<sup>33</sup> Ed. 1202.03(b).

<sup>34</sup> "Serious injury" is defined in RSA 126-U:1, VI as "any harm to the body which requires hospitalization or results in the fracture of any bone, non-superficial lacerations, injury to any internal organ, second-or third-degree burns, or any severe, permanent, or protracted loss of or impairment to the health or function of any part of the body."

<sup>35</sup> RSA 126-U:10, II.

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